

TITLE 2. CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM NOTICE OF PROPOSED REGULATORY ACTIONS

NOTICE IS HEREBY GIVEN that the Board of Administration (Board) of the California Public Employees' Retirement System (CalPERS) proposes to take the regulatory action described below after considering public comments, objections, or recommendations.

I. PROPOSED REGULATORY ACTION

Notice is hereby given that the CalPERS Board intends to amend section 554.4 in Title 2 of the California Code of Regulations pertaining to the election of members to the CalPERS Board of Administration.

II. PUBLIC HEARING

The Board has scheduled a public comment period. A public hearing will be scheduled upon a timely request filed pursuant to Government Code section 11346.8. The request must be in writing, and submitted to the Regulations Coordinator at least 15 days prior to the close of the public comment period.

III. ACCESS TO HEARING ROOM

If a hearing is scheduled, it will be held at the CalPERS headquarters building (address of the Regulations Coordinator). The hearing room will be accessible to persons with mobility impairments, and it can be made accessible to persons with hearing or vision impairments upon advance request to the Regulations Coordinator.

IV. WRITTEN COMMENT PERIOD

Any interested person may submit written comments relevant to the proposed regulatory actions. The written comment period closes at 5:00 p.m. on November, 22, 1999. All written comments must be received by the Regulations Coordinator by the close of the comment period, at the following address:

Judy Daggao, Regulations Coordinator
California Public Employees' Retirement System
400 P Street, Room 1120
P.O. Box 942702
Sacramento, California 94229-2702

V. AUTHORITY AND REFERENCE

The CalPERS Board is authorized to take regulatory action in Government Code section 20121. The proposed action would implement, interpret and make specific Government Code section 20096.

VI. INFORMATIVE DIGEST

Section 20096 in the Public Employees' Retirement Law (PERL) requires the Board to distribute and collect ballots for the election of its members, and to develop election procedures. The Board has enacted procedures found at sections 554 - 554.7 of Title 2 of the California Code of Regulations.

Section 554.5 provides for candidate statements to be mailed with a ballot and a postage paid return envelope to voters. The candidate statements along with other information, are printed in a booklet to voters. The information in the booklet contains 1) information about the Board of Administration, 2) voting instructions, 3) a disclaimer preceding the candidate statements, 4) the candidate's name, employer, years of CalPERS-covered service, job classification and "candidate statement" of no more than 150 words in length. Existing section 554.4 establishes what may be included in the candidate statement that is published and distributed by CalPERS as part of the ballot process. Among its various criteria for style and content, the regulation specifies that the candidate's opinion or positions on issues of general concern to the System's membership may be included, so long as they are clearly stated as the candidate's opinion or view. The regulation also specifies that the statements must not include remarks or questions that are inherently misleading, including rhetorical remarks and questions that are inherently misleading. The proposed amendment would eliminate these criteria. The proposed amendment would also add that the statement shall be limited to the candidate's own background and qualifications and not make reference to other candidates or to other candidates' qualifications, character or activities.

VII. PLAIN ENGLISH POLICY OVERVIEW

The proposed regulatory actions do not affect small business.

VIII. DISCLOSURES REGARDING THE PROPOSED REGULATORY ACTIONS:

- A. MANDATE ON LOCAL AGENCIES AND SCHOOL DISTRICTS
The proposed regulatory actions impose no mandate on local agencies or school districts.
- B. COST OR SAVINGS TO ANY STATE AGENCY
The proposed regulatory actions have no cost impact to any state agency.
- C. COST TO ANY LOCAL AGENCY OR SCHOOL DISTRICT
The proposed regulatory actions have no cost impact to any local agency or school district which must be reimbursed under Part 7 (commencing with Section 17500) of Division 4.
- D. NONDISCRETIONARY COST OR SAVINGS IMPOSED ON LOCAL AGENCIES
The proposed regulatory actions impose no nondiscretionary cost or savings on local agencies.
- E. COST OR SAVINGS IN FEDERAL FUNDING TO THE STATE
The proposed regulatory actions have no cost impact to any federal funding to the state.

F. ADVERSE ECONOMIC IMPACT

The proposed regulatory actions have no significant adverse economic impact on business including the ability of California businesses to compete with businesses in other states.

G. COST IMPACT ON PRIVATE PERSONS OR BUSINESSES

The proposed regulatory actions have no cost impact on private persons or businesses.

H. IMPACT ON JOBS AND BUSINESSES WITHIN CALIFORNIA

The proposed regulatory actions will not (1) create or eliminate jobs within California; (2) create new businesses or eliminate businesses within California; or (3) affect the expansion of businesses currently doing business with California.

I. EFFECT ON HOUSING COSTS

The proposed regulatory actions have no significant effect on housing costs.

IX. CONSIDERATION OF ALTERNATIVES

The Board must determine that no alternative considered would be more effective in carrying out the purpose for which the actions are proposed or would be as effective and less burdensome to affected private persons than the proposed actions. The Board invites interested persons to present statements or arguments with respect to alternatives to the proposed regulations at the above mentioned hearing or during the written comment period.

X. CONTACT PERSONS

Please direct inquiries concerning the substance of the proposed regulatory action to:

Judy Daggao, Election Coordinator
California Public Employees' Retirement System
400 P Street, Room 1120
P.O. Box 942702
Sacramento, California 94229-2702
Telephone: (916) 326-3007

Please direct requests concerning processing of this regulatory action to:

Judy Daggao, Regulations Coordinator
California Public Employees' Retirement System
400 P Street, Room 1120
P.O. Box 942702
Sacramento, California 94229-2702
Telephone: (916) 326-3007

XI. AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

The entire rulemaking file is available for public inspection through the Regulations Coordinator, at the address shown above. To date, the file consists of this notice, the proposed text of the regulations, and the Initial Statement of

Reasons (ISOR). A copy of the proposed text and the ISOR is available at no charge, upon telephone or written request to the Regulations Coordinator.

XII. AVAILABILITY OF MODIFICATIONS TO PROPOSED REGULATIONS

The Board may, on its own motion or at the recommendation of any interested person, modify the proposed text of the regulations after the public comment period has closed. It may amend section 554.4 as modified if the changes are sufficiently related to the original text so the public could have anticipated them.

If the Board modifies its regulatory action in this manner, it will prepare a comparison of the original proposed text and the modifications for an additional public comment period of not less than 15 days prior to the date on which the Board adopts, amends or repeals the resulting regulation. A copy of the comparison text will be mailed to all persons who submitted written comments or asked to be kept informed as to the outcome of this regulatory action.

PROPOSED REGULATORY ACTION BY CALPERS

Amendment to section 554.4 – Candidate Statements

Each candidate for an elective Board member position may provide a statement including the candidate's name, the word "Incumbent" when the candidate is the incumbent in the position for which the election is being held, job classification, employer (or employer at retirement), years of CalPERS-covered service, and a brief factual, biographical description of no more than 150 words of the candidate's education and background, and a list of organizations to which the candidate belongs, and positions held in those organizations. The statement shall be limited to a recitation of the candidate's own personal background and qualifications, and shall not in any way make reference to other candidates for office or to another candidate's qualifications, character or activities. ~~Statements indicating the candidate's opinion or positions on issues of general concern to the System's membership may be included, so long as they are clearly stated as the candidate's opinion or view.~~ The statements must be truthful, and shall not include other information. ~~The statements must not include any remarks or questions that are inherently misleading, including rhetorical remarks and questions that are inherently misleading.~~

The statement shall be filed with the Election Coordinator at the time the candidate accepts nomination. Once filed, statements may not be changed or withdrawn except by the Election Coordinator. The Election Coordinator shall reject or edit any statement which contains obscene, vulgar, profane, scandalous, untrue, libelous or defamatory matter or which does not meet the statement limitations stated above. The Election Coordinator may request the candidate to verify the truthfulness of any factual statements. The candidate shall provide timely verification upon such request. The Election Coordinator shall remove from the ballot the name of any candidate who fails to respond to such a verification request. Nothing in this section shall be deemed to make candidate statements or the authors thereof free or exempt from any civil or criminal action or penalty because of any false, slanderous or libelous statements offered for printing or distributed to voters. Information contained in the statement is the responsibility of the candidate and the Public Employees' Retirement System accepts no responsibility for the validity of the statement or the contents thereof.

Authority: Government Code section 20121. Reference: Government Code section 20096.

INITIAL STATEMENT OF REASONS

Amendment to section 554.4 – Candidate Statements

Description of Public Problem, Administrative Requirement, or Other Condition or Circumstance that the Regulation is Intended to Address

The California Public Employees' Retirement System (CalPERS) is administered by a 13-member Board of Administration (Board). Six of these members are elected by various constituency groups within CalPERS' membership base. The elected Board members each serve four-year terms.

The Board has enacted procedural regulations to govern the conduct of its elections, at sections 554-554.10 in Title 2 of the California Code of Regulations. They specify that elections shall be conducted by an Elections Coordinator designated by the Chief Executive Officer for CalPERS. They also identify the content requirements for candidate statements that are printed and mailed by CalPERS with the election ballots.

Each candidate may submit a written candidate statement to the Elections Coordinator, as regulated by section 554.4. Currently, this section specifies that the candidate's opinion or positions on issues of general concern to the System's membership may be included, so long as they are clearly stated as the candidate's opinion or view. The regulation also specifies that the statements must not include remarks or questions that are inherently misleading, including rhetorical remarks and questions that are inherently misleading. The proposed amendment would eliminate these criteria. The proposed amendment would also add that the statement shall be limited to the candidate's own background and qualifications and not make reference to other candidates or to other candidates' qualifications, character or activities.

The purpose of candidate statements historically has been to permit each candidate a limited forum to distribute personal and professional identifying information about himself or herself to voters. CalPERS has sought the maximization of the amount of information available about the candidate.

In 1994, the regulation was expanded to permit statements to include expressions of opinion or position on issues of general concern to the System's membership. It was intended to strike a balance between providing CalPERS' voters with clear, concise information that was neither false nor misleading and promoting the right of candidates to freely present their views to voters.

Expectations were not borne out by experience. It was found that providing such a broad forum did not necessarily promote clear and concise information being provided to voters. This became particularly pronounced where candidate statements would refer to opposing candidates. In some cases, candidate statements appeared to become more argumentative and less descriptive or informative.

Given the limited space available for candidate statements to be published in the candidate statement booklet, together with the limited time available to review candidate statements' content prior to deadline for publication, CalPERS desires to promote more descriptive and informative statements. The current amendment is proposed in order to return the candidate statement to its originally intended function – permit each candidate to identify himself or herself to the voters.

Amend Section 554.4 - Candidate Statements

Specific Purpose: This regulation is intended to eliminate statements of candidates' opinions and positions on issues of general concern to the System's members, to eliminate the regulatory text regarding inherently misleading remarks and questions and to require that candidate statements are limited to a recitation of the candidate's own personal background and qualifications, and to add the requirement that the candidate statement can not make reference to other candidates.

Necessity: The candidate statement forms the basis for voting decisions by most of the CalPERS electorate. Besides the ballot, it is the only document concerning the qualifications of each candidate that CalPERS publishes and distributes to voters. Thus, it is imbued with the system's authority, and it may even be perceived by some voters as an official endorsement (though the system's disclaimer of responsibility is directed to candidates and voters). For these reasons, CalPERS has historically regulated the content of candidate statements. The proposed amendment is necessary to apply the policy that candidate statements should be a brief, biographical description of the candidate's education and background.

Technical, Theoretical And/Or Empirical Studies, Reports Or Documents: Not applicable.

Alternatives To The Regulatory Action And CalPERS' Reasons For Rejecting Those Alternatives: CalPERS has considered alternatives to this proposal, and has determined there is no more effective way to carry out its purpose that would be less burdensome.

Alternatives To The Regulatory Action That Would Lessen Any Adverse Impact On Small Businesses: The proposed actions have no cost impact to small businesses.